

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIGUEL ZAVALA GARCIA,

Defendant.

Case No. CR-10-086-RAW

ORDER & OPINION

Before the court is Defendant Garcia's motion to dismiss or in the alternative transfer venue [Docket No. 195]. Garcia argues he cannot receive a fair trial in this district, and thus he should receive a change of venue based on prejudice under Federal Rule of Criminal Procedure 21(a). He maintains that Oklahoma has a racial bias against Hispanics, as evidenced by the Oklahoma Taxpayer and Citizen Protection Act.


Under Rule 21(a), this "court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there." Fed. R. Crim. P. 21(a); United States v. Pedraza, 27 F.3d 1515, 1525 (10th Cir. 1994). The court is not so satisfied. Moreover, as the Government argues, Defendant has not shown any actual prejudice, and a determination of any possible prejudice against this Defendant cannot be made without attempting to empanel a jury. Accordingly, the court, in its discretion, will not grant a change of venue based on prejudice.

Defendant also requests a change of venue based on convenience. Under Federal Rule of Criminal Procedure 21(b), the “court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties and witnesses and in the interest of justice.” For the reasons set forth in the Government’s Response, the court, in its discretion, will also not grant a change of venue based on convenience. As the Government argues, trial in this court will not be any more inconvenient than trial in the Eastern District of California, and will actually be more convenient in this district.

Defendant further argues that this case should be dismissed if it is not transferred based on prejudice and/or convenience of the parties. The court agrees with the Government that this is not a reasonable request, and Defendant has provided no authority for such relief. The motion to dismiss or in the alternative transfer venue [Docket No. 195] is hereby DENIED in its entirety.

It is so ORDERED this 11th day of October, 2011.

Dated this 11th day of October, 2011.


Ronald A. White
United States District Judge
Eastern District of Oklahoma